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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,378	12/12/2003	Nicolas Voute	2035.008A	1697

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ALBANY, NY 12203

EXAMINER

DOERRLER, WILLIAM CHARLES

ART UNIT	PAPER NUMBER
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3744

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/735,378

Applicant(s)

VOUTE ET AL.

Examiner

William C. Doertler

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In all independent claims, state that the first and second dimensions are different. It is unclear whether this is referring to different sides of different containers (length vs. width) or merely containers of different sizes. It is noted that claiming that the first dimension "proportionally corresponds to a second dimension of a bioproduct container for a larger-scale unit, and wherein the first dimension and the second dimension are different dimensions" is seen as claiming that the first and second dimensions are not the same. Any difference is seen as proportional. While applicant has stated the desired intent in the remarks, the claims should be made to read so it is clear what is being claimed without referring to remarks made during prosecution.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5,7-10,12-16,19,21,22,24-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Benders (3,586,097).

Benders shows in figure 5 an apparatus having multiple chambers with opposing surfaces which are in contact with heat transfer pipes (51) winding around the surface, with the width of the chamber designed to closely match the width of a bloodbag. The device of Benders can be used to both freeze and thaw a bioproduct. The dimensions of the bloodbag will be proportional to some other bioproduct container, such as a larger bag (applicant has not specified what the other container may be). As currently written the claim is met by using a container that is smaller in at least one aspect to any other container which might possibly be used for a bioproduct. This can include a grocery bag, as meat and vegetables could be seen as biological products. In the claims "proportionally corresponds" is also seen to bear no patentable weight as the proportional ratio may be any number from slightly greater than zero to near infinite. Because of the incredible breadth of the claims, claims 33-38 are seen as met by Benders, as "proportionally" and the large range of sizes for containers allows just about any size container to meet the claims. It is noted that no relationship to the larger scale unit has been claimed. Is the small container being cooled in the present claim containing material from the larger scale system. The rejection using Benders is applicable due to the extreme breadth of applicant's claims. Is the larger scale system physically larger?, or merely able to cool or thaw more fluid? Since no relationship (other than a proportional size difference) is claimed between containers, as long as there is another container for holding biological products during freezing or thawing which is either larger in size or used in a system with greater capacity, the last indent of all the independent claims has been met. This leaves the claims requiring a means to

hold a container "coupleable" to at least one driving device for freezing or thawing. Since the cooling/heating system of Bender comprising means to thermally treat the heat transfer fluid, as well as circulate it, the means to thermally treat the biological fluid are thermally coupled to the biological fluid containers.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6,11,17,18,20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benders in view of Lavender.

Benders discloses applicant's basic inventive concept, an apparatus to transfer heat to a contained bioproduct with surfaces contacting the container of material, substantially as claimed with the exception of clamps to hold the container in place and removable dividers. Lavender shows these features to be old in the art (figure 1 shows the dividers and figures 5 and 6 show the containers being fastened to the wall). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention from the teaching of Lavender to modify the thermal treatment device of Benders by using dividers to produce individual treatment zones which are easily loaded and unloaded and fastening the containers to the walls to promote heat transfer.

Response to Arguments

Applicant's arguments filed 6-15-2006 have been fully considered but they are not persuasive. The change to depth from thickness has overcome the rejection of claims 33,35 and 37. The claims are still rejected however, since they depend from unclear claims. The independent claims are still unclear as to the relationship of the dimensions. While applicant has stated what is intended in the remarks, the claims themselves are still unclear. There is a lack of connection between the dimensions of the current device and the "larger scale" device. Applicant has not claimed that the fluid travels from one device from the other, merely that the current device has a dimension which is proportional to a larger scale device. Since a larger scale device can mean one that is physically larger, or physically smaller with a more powerful tempering unit to temper a larger volume of fluid, and proportional need not be bigger, the last indent of the independent claims positively recites very limited structure. The last indent claims only that a driving device (a pump, a device that actually changes the temperature of the fluid, a motor) is "coupleable" to one surface of the container. It is noted that this is taken to mean "able to be coupled" and is not even a positive recitation that the driving device is coupled to a surface of the container, but merely intended use. Coupled is even open to interpretation as thermally coupled, physically attached or merely physically related (such as by a tether or umbilical cord).

It is admitted that Bender never mentions using the device to determine the heat transfer properties of a fluid and cooler and applying what is learned to a larger system. But Bender does not have to show this to anticipate what applicant has currently

claimed. Bender does show a device for cooling and thawing biological materials in containers that are proportional to containers for a larger scale system (since as mentioned above a larger scale system may not have larger containers and proportional can mean having a ratio of near zero to near infinite). If applicant were to clearly claim a method of determining the heat transfer characteristics of a system by using a small system to determine data which is then applied to a larger system, Bender would no longer be applicable. Such claims are not found in the current claims. In regard to claim 5, flanges 25 and 26 of Bender are seen as clamping onto the sides of the unit and hold the containers in place.

In regard to Lavender, the movable plates and the stationary plates are seen to produce clamping arrays, as they combine to hold the container in place. The divider of Lavender is seen as removable. Applicant has not claimed any structure which make the divider easy to remove. Walls 15 of Lavender can be removed by removing the screws on the rods which hold them in place, thus they are removable. In regard to claim 20, when the containers are being treated by either device, they are seen as becoming a part of the device, albeit temporarily, as they are fastened to the device. This is seen as being integral.

Conclusion

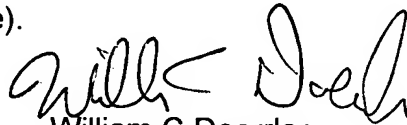
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Doerrler whose telephone number is (571) 272-4807. The examiner can normally be reached on Monday-Friday 6:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


William C Doerrler
Primary Examiner
Art Unit 3744

WCD